

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
License No. 469706 and MERCHANT MARINER'S DOCUMENT
Issued to: George V. Lawrence Z-9539 98

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2225

George V. Lawrence

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 16 March 1979, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, after a hearing at Cleveland, Ohio, on 14 February 1979, admonished Appellant upon finding him guilty of misconduct. The single specification of the charge of misconduct found proved alleges that Appellant, while serving as Master aboard M/V SAM LAUD, under authority of the captioned documents, did, on or about 14 January 1979, while said vessel was in the port of Cleveland, Ohio, wrongfully fail to give notice of a marine casualty involving his vessel to the nearest Marine Inspection Office of the Coast Guard, to wit, Marine Safety Office, Cleveland, Ohio.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The investigation Officer introduced into evidence the testimony of two witnesses and five documents.

In defense, Appellant introduced into evidence one document.

Subsequent to the Hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and specification as alleged had been proved. He then entered an order of admonition.

The decision was served on 22 March 1979. Appeal was timely filed on 12 April 1979, and perfected on 16 April 1979.

FINDINGS OF FACT

On 14 January 1979, Appellant was serving under authority of the captioned documents as Master of M/V SAM LAUD. Because of the disposition of this appeal, further findings are unnecessary.

BASIS OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. It is contended that Appellant's actions were reasonable and therefore he was not guilty of misconduct.

APPEARANCE: Foster, Meadows & Ballard, Detroit, Michigan, By
Robert N. Dunn, Esq.

OPINION

On the morning of 14 January 1979, a Sunday, Appellant was serving as Master, aboard M/V SAM LAUD, then proceeding upbound in the Cuyahoga River, at Cleveland, Ohio. At approximately 0940, SAM LAUD suffered a slight collision with M/V PUTZFRAU, which was moored and unmanned. No person was injured. SAM LAUD continued up the river and moored at 1400. At 1430 Appellant notified an employee of his vessel's owners about the casualty. The latter advised Appellant that he would notify both the owner of M/V PUTZFRAU and the Coast Guard. The following day at 1500, a different employee of the company which owns SAM LAUD did notify the Coast Guard of the casualty. In the meantime SAM LAUD got underway. At the next port of call, Sarnia, Ontario, Canada, Appellant mailed a written report of the casualty on Coast Guard form 2692, to the Coast Guard Marine Investigation Office, Cleveland. It was posted on 17 January 1979, three days after the incident, and received on 22 January 1979.

I have recited the pertinent facts found proved at the hearing solely for the purpose of explaining my decision. At that hearing, the single specification of misconduct alleging an outright failure "to give such notice" was clarified so as to allege only a violation of 46 CFR 4.05-1 for failing to give such notice "as soon as possible". As so clarified the specification was found proved.

Without deeming it necessary to elaborate, I am unable to conclude that Appellant's actions in notifying the owner's agent of the casualty immediately after docking, and eliciting from him an assurance that he would notify the Coast Guard, followed as it was by an actual from an agent, violated the cited regulation. Hence, in light of all the circumstances, I am constrained to vacate the order and dismiss the charge.

ORDER

The order of the Administrative Law Judge, dated at Jacksonville, Florida on 16 March 1979, is VACATED, the findings are SET ASIDE, and the charge is DISMISSED.

R. H. SCARBOROUGH

Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 24th day of July 1980.